

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

CSX TRANSPORTATION, INC.,

Plaintiff,

v.

Civil Action No. 2:18-cv-530-MSD-RJK

**NORFOLK SOUTHERN RAILWAY
COMPANY, *et al.*,**

Defendants.

**NORFOLK AND PORTSMOUTH BELT LINE RAILROAD COMPANY'S
MEMORANDUM IN SUPPORT OF MOTION TO FILE DOCUMENTS UNDER SEAL**

Norfolk and Portsmouth Belt Line Railroad Company ("the Belt Line"), by counsel, states as follows in support of its motion to seal (1) unredacted portions of the memorandum in support of its motion in limine to exclude evidence or argument about CSXT's private switching rates^T and (2) Exhibits A, C, D and E to the memorandum in support. The redactions contain certain highly confidential, proprietary, and sensitive business information, the release of which could harm the Belt Line, plaintiff CSX Transportation, Inc. and co-defendant Norfolk Southern Railway Company.

1. There are three requirements for sealing court filings: (1) public notice with opportunity to object; (2) consideration of less drastic alternatives; and (3) a statement of specific findings in support of a decision to seal and reject alternatives to sealing. *Flexible Benefits Council v. Feldman*, No. 1:08-CV-371, 2008 U.S. Dist. LEXIS 93039 (E.D. Va. Nov. 13, 2008) (citing *Ashcraft v. Conoco, Inc.*, 218 F.3d 282, 288 (4th Cir. 2000)). Even when no party challenges a motion to seal, the Court must still ensure the motion is supported by good cause. *Auburn Univ. v. IBM Corp.*, No. 3:0-cv-694-MEF, unpublished, 2010 WL 3927737 (M.D. Ala. Oct. 4, 2010).

2. All three requirements are met here. On October 29, 2019, the Court entered a Stipulated Protective Order, which governs the parties' use of confidential information produced in this case. *See D.E. 79.* Paragraph 2 of the Stipulated Protective Order defines "Protected Material" as material containing information that "must or may be protected from disclosure," including material designated "CONFIDENTIAL" and "CONFIDENTIAL – ATTORNEYS' EYES ONLY." *Id.* at para. 2.

3. The Belt Line's memorandum in support of its motion in limine to exclude evidence or argument about CSXT's private switching rates, and Exhibits A, C, D and E to the memorandum in support, contain highly confidential and sensitive information relating to CSXT's, NS's, and the Belt Line's transportation and shipping practices, business strategies, internal communications, and other highly confidential, proprietary, and sensitive business information that has been marked as either "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS' EYES ONLY," the release of which would harm all three parties.

4. This information thus constitutes "Protected Material" under the Stipulated Protective Order. *See id.*

5. The Stipulated Protective Order requires the Belt Line to file these documents under seal. *See id.* at para. 16.

For the foregoing reasons, the Belt Line requests that the Court enter the proposed order attached as Exhibit A to the Belt Line's motion to seal, granting the Belt Line leave to file the unredacted portions of the memorandum in support of its motion in limine to exclude evidence or argument about CSXT's private switching rates, and Exhibits A, C, D and E thereto, under seal, and directing the Clerk of Court to maintain such exhibits under seal pending further order of the Court.

Dated: May 7, 2021

**NORFOLK AND PORTSMOUTH BELT LINE
RAILROAD COMPANY**

By: _____ */s/ W. Ryan Snow* _____

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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of May 2021, I electronically filed the foregoing document with the Clerk of the Court for the U.S. District Court, Eastern District of Virginia, Norfolk Division, using the electronic case filing system of the court. The electronic case filing system will send a "Notice of Electronic Filing" to the attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

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